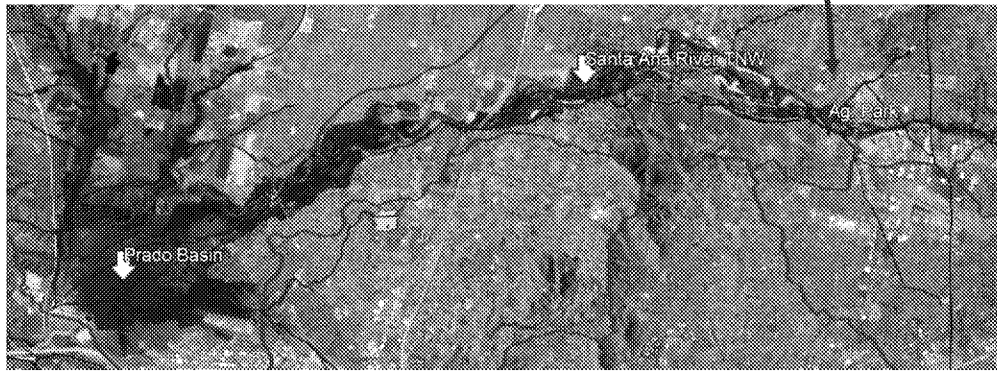


Tract 28987 residential development 'Riverside Agricultural Park'



Clean Water Act Section 404

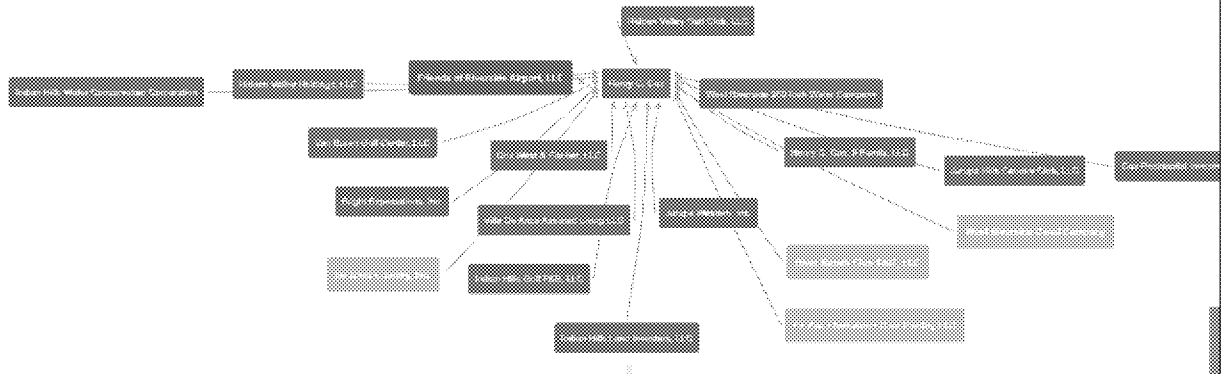
By Bonnie Rogers, Enforcement Officer, ECAD, Region 9, EPA

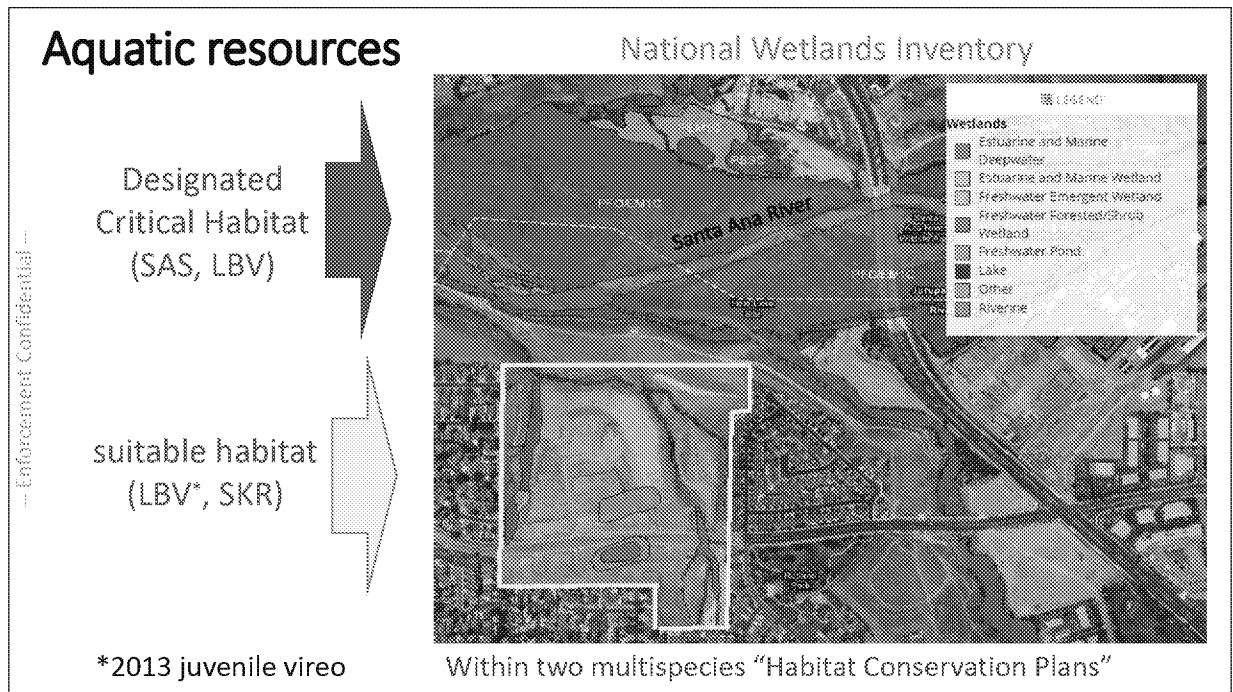
February 2020

Company size

Friends of the Riverside Airport LLC
Residential developer H.C. Cox

- Company search:
No financial results.
- People search:
34+ business names & 62+ DBAs.
No record of site purchase/swap.



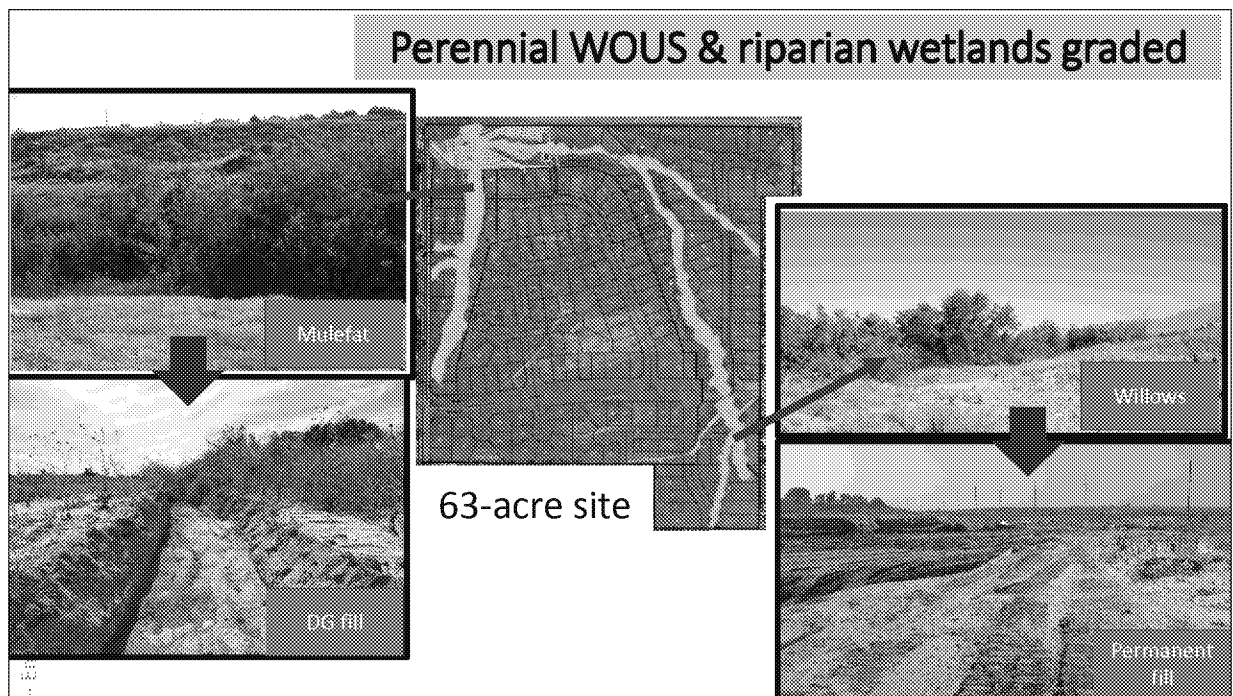


SKR (Stephen's kangaroo rat) HCP and Western Riverside County HCP (2006).

WRMHCP Jurupa Area Plan Habitat Block 1, 2, and 3 and small portion of Existing Core A. Subunit 1 (Santa Ana River North).

HCPs: Conserve wetlands, LBV populations.

LBV & SKR = endangered. 2013 JD states 1.12 acres is within HCPs.



T-D drainage with decomposed granite and northeast portion of drainage SC-1.

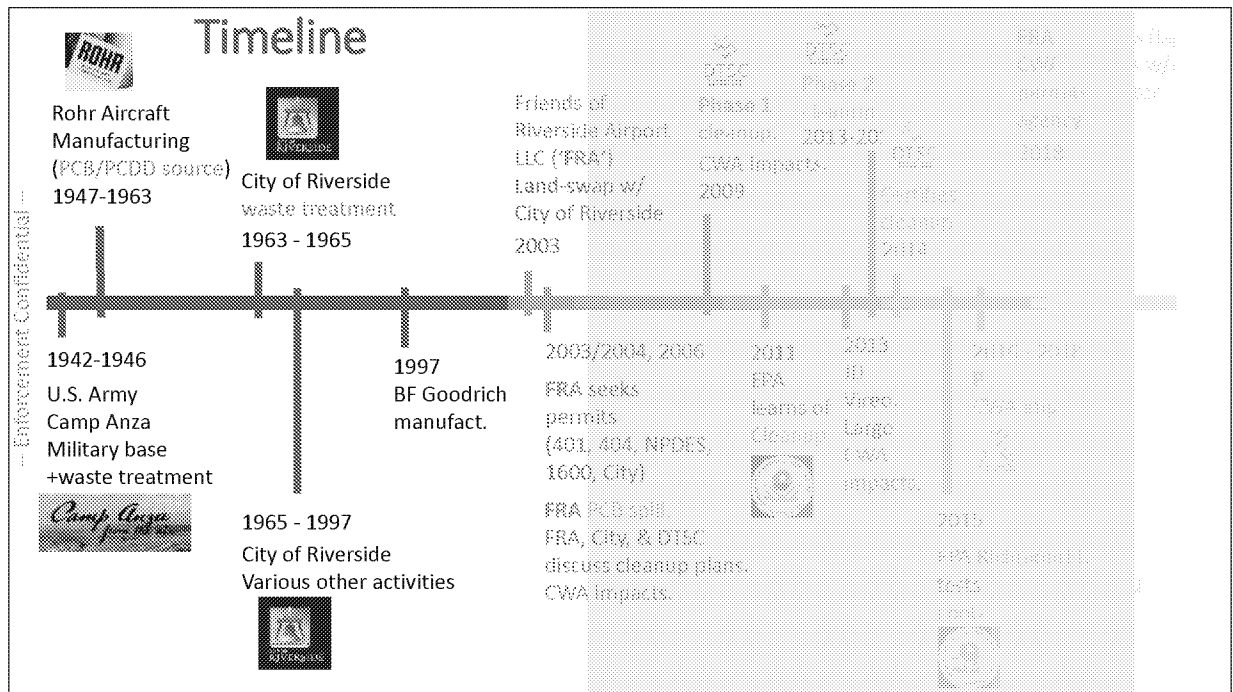
CWA violation

Discharge of pollutants into a water of the United States from a point source by any person without authorization or exemption.

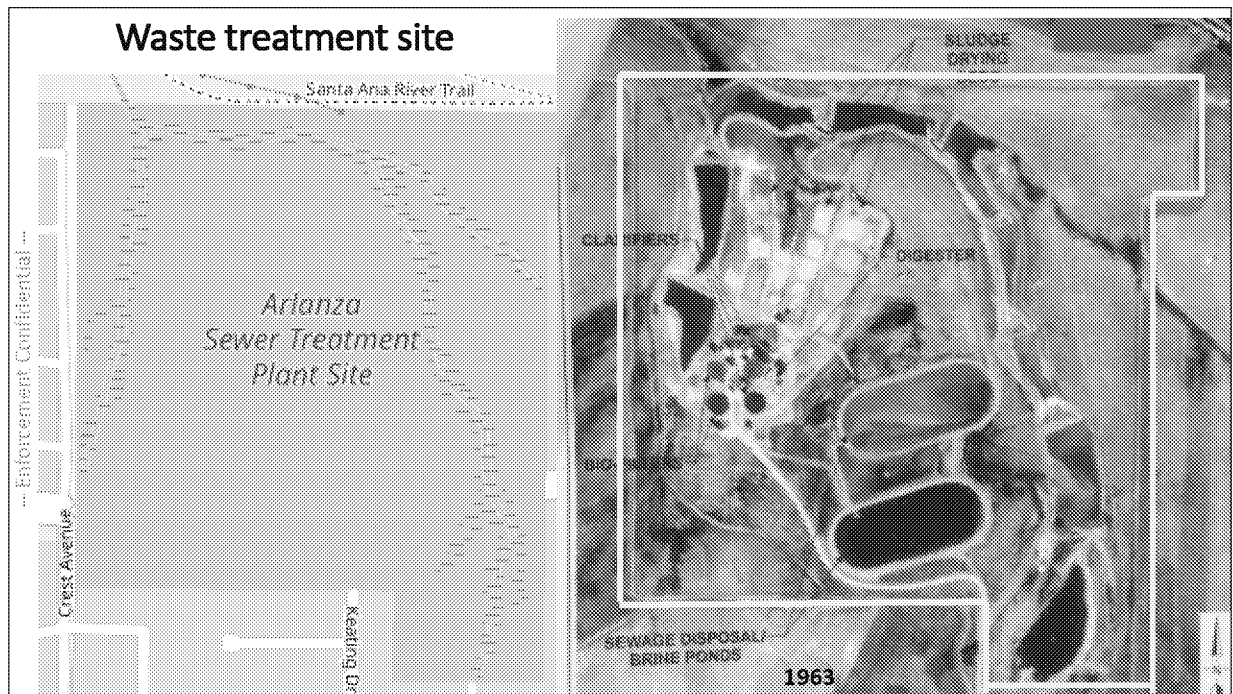
EPA ref: <https://www.epa.gov/enforcement/criminal-provisions-clean-water-act>

33 U.S.C. 1311 (Effluent limitations), 33 U.S.C. 1344 (permits for dredged or fill material).

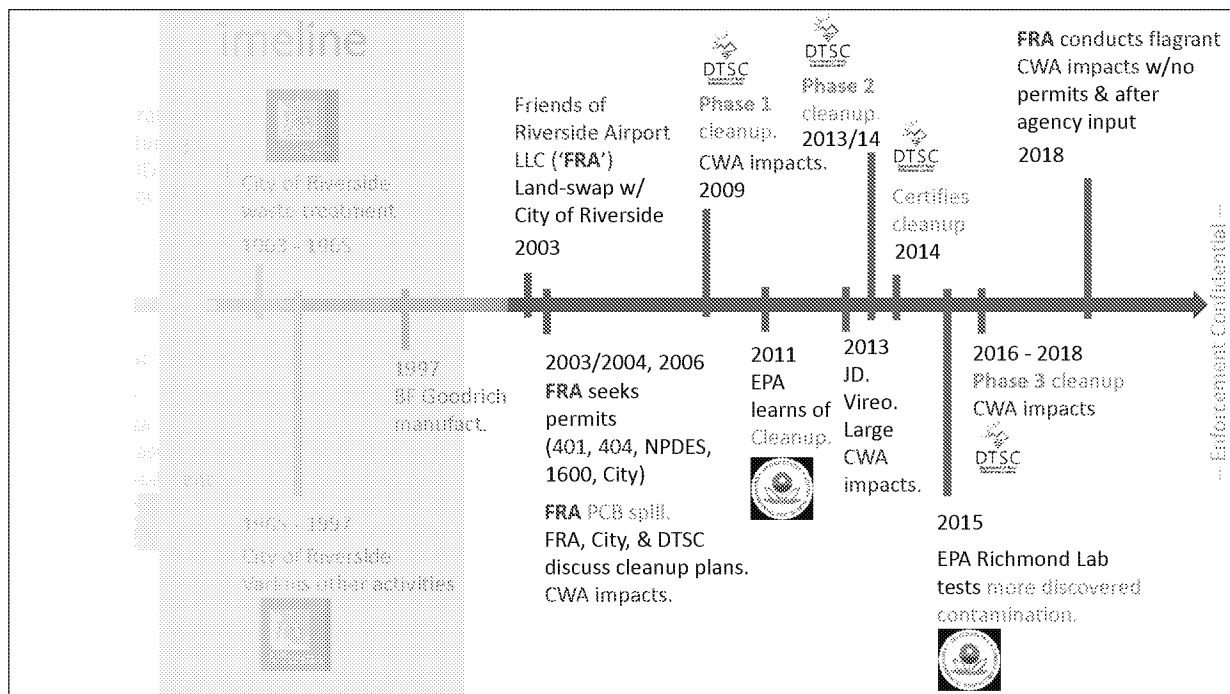
a person who has violated Sections 301 and 404 of the Clean Water Act ("CWA" or "Act")¹ by discharging dredged or fill material into wetlands or other waters of the United States without Section 404 permit authorization,

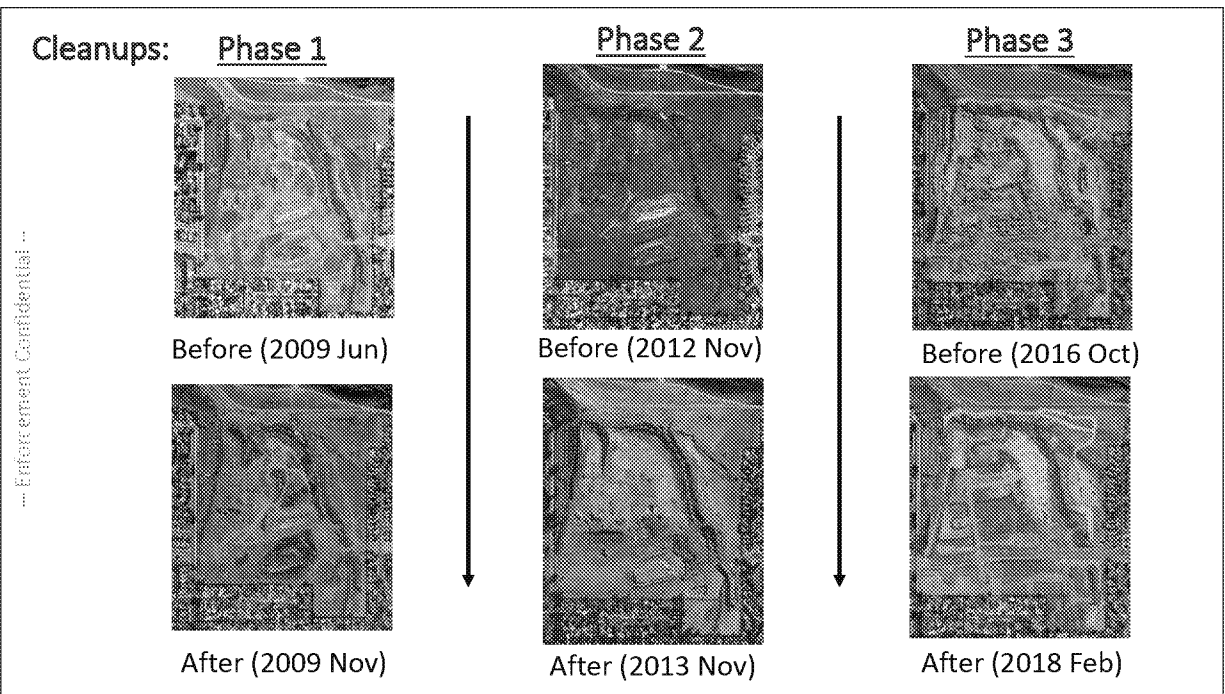


The Corps memo does not describe CWA impacts prior to 2009, but they are visible aerially in 2006 and somewhat prior in 2003 (may or maybe not covered by the NWP). The 2006 NWP would have expired in 2007 NWP program cycle (cycles: 2012, 2017, 2022). Sewer plant closed in 1965.



1963 historic photo by Riverside. 1967 historic aerial underneath.
The two ponds are sewage disposal brine ponds.
There was a digester, clarifier, bio-filters, sludge drying beds.





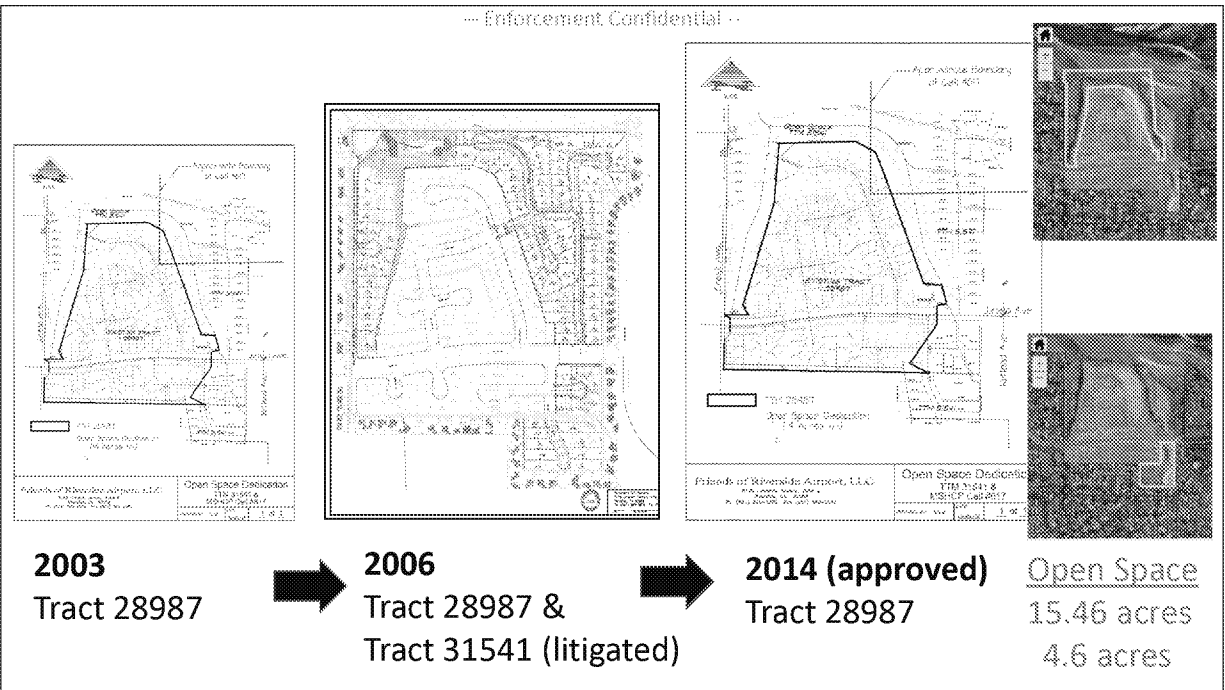
DTSC cleanups: 2009, 2013, 2016.



Phase 3 (2016-2018).



Drainage SC-1



Proposed development of drainages. Litigation about Tract 31541 led to not developing drainages.
Construction of TTM 31541 was never initiated as it was litigated and later superseded by TTM 36142(?).

Limited EPA nexus



- EPA conducted coordinated sediment testing w/DTSC
- RWQCB issued NPDES
- DTSC's used EPA Brownsfield grant funds

Work Group with CDPH on adjacent contamination health studies – 2019.

Jurisdictional Delineation (July 9, 2013):

Wetlands: 0.95 acre riparian











Non-wetland: 0.17 WOUS

Subtotal: 1.12 acre WOUS

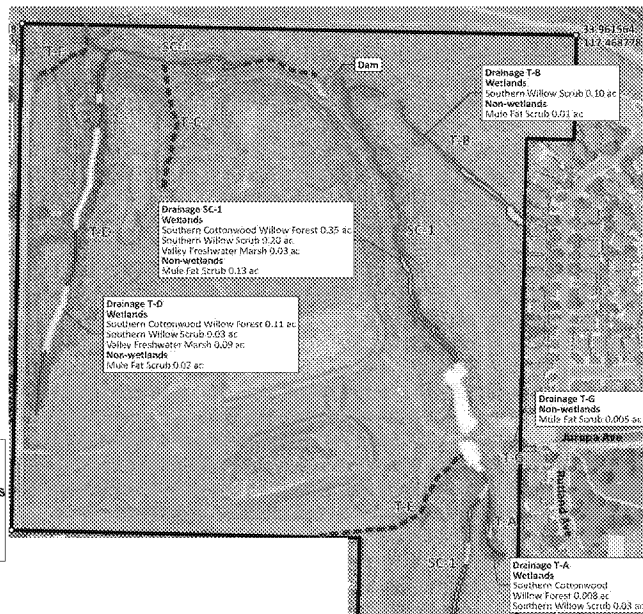
+

Unveg. stream 0.26 acre WOUS?

Total: 1.38 acre WOUS

 Boundary	 Non-wetlands
 Corps Jurisdictional Delineation	 Mule Fat Scrub
 Wetlands	 Non-jurisdictional Features
 Southern Cottonwood Willow Forest	 Channel Centerline
 Southern Willow Scrub	
 Valley Freshwater Marsh	

Total Habitat: 4.95 acres habitat

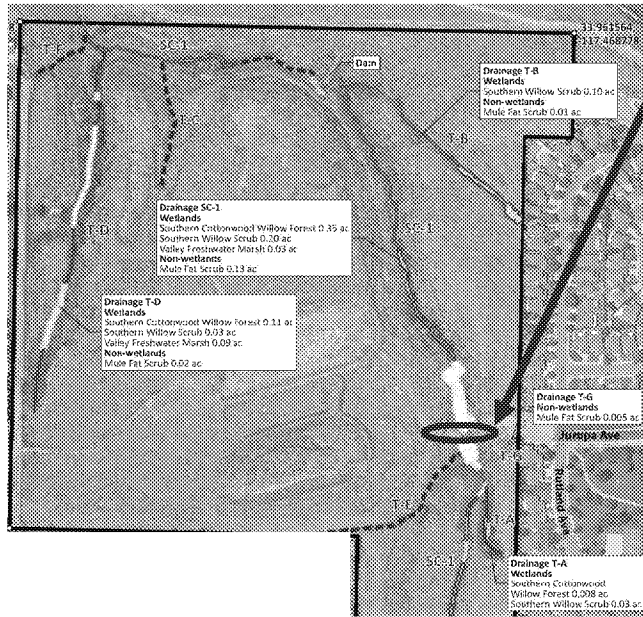


— Enforcement Confidential —

Gonzales (FRA) did 2013 JD, then after submitting a permit application went dark.
Based on historic aerials, all of the burgundy dotted lines (0.26 acre) may be jurisdictional.

Corps authorizations

---Enforcement Confidential---



SPL-2004-00519

NWP 14 road crossing
0.006 acre temporary impacts
Became permanent impact.

SPL-2006-00256

NWP 39 cleanup+development
0.35 acre temporary impacts
+mit. & preserve open space
Instead permanently impacted.

SPL-2013-00850

SIP

Application submitted but W/D

Gonzales (FRA) did 2013 JD, then after submitting a permit application went dark.

Based on historic aerials, all of the burgundy dotted lines (0.26 acre) may be jurisdictional.

SPL-2006-00256 development in uplands and restoration of temporary impacts and revegetation of drainages, and preserved open space in perpetuity.

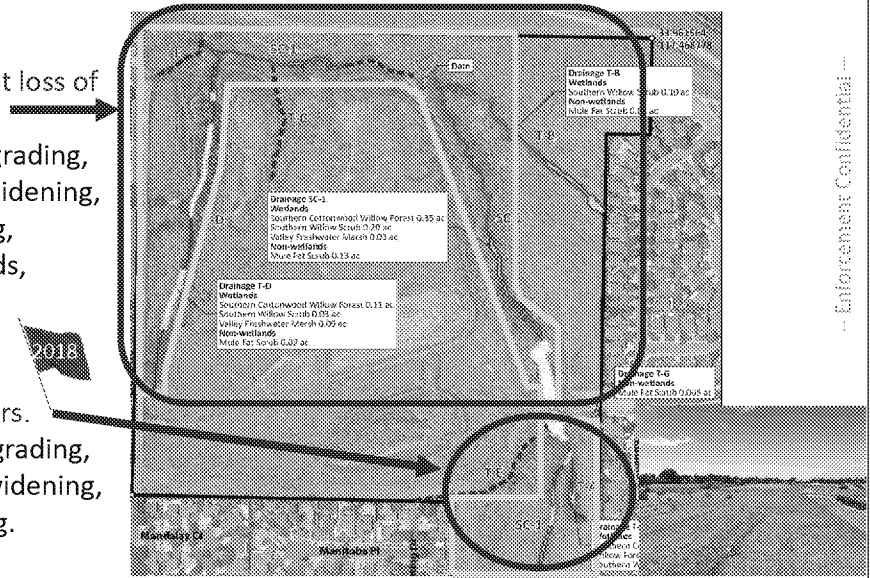
Temp impacts never implemented b/c could not recover costs of having impacts the on-site WOUS. Included ESA NLAA. Major non-compliance/UA here.

2003-2009: Gross non-compliance & unauthorized activities

2009-2018: Continued unauthorized activities

- Discharge of fill:
temporary & permanent loss of functions:
Fill, mechanized work, grading, crossings, deepening, widening, re-routing, recontouring, damming, sediment pads, stockpiling.

- Discharge of fill:
permanent loss of waters.
Fill, mechanized work, grading, crossings, deepening, widening, re-routing, recontouring.



Discuss what Nationwide Permits they sought and which are relevant.

Any prior permits expired or became biologically outdated, or were not analyzed in full scope of an individual permit (including considerations for Endangered Species, perennial waters, and wetlands).

2003 road crossing limited. 2006 Nationwide Permit for 0.355 acres expired before impacts.

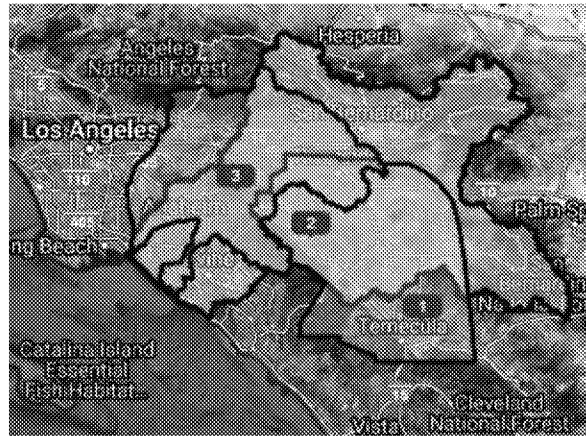
2003-2006 got some Corps permits but implemented major non-compliance. Then Started remediation work of Phase 1 in 2009 without permits.

CWA Section 404 Penalty & Mitigation

- Estimated penalty: \$250,000
- + Percent gravity reduction for on-site contamination cleanup

+

- **Off-site Mitigation Bank fees:**
1.12 acres impact @ 6.3:1 = 7.05 acres
7 acres * \$350,000 /acre = \$2,205,000



Bank options

0.95 acre wetlands, 0.17 acre perennial stream. High end = \$700K.

Penalty can be reduced if on-site mitigation occurs, but not if off-site mitigation occurs.

Soquel Canyon Mitigation Bank primary SA but is mostly uplands. Riverside-Corona RCRCO w/eph/int/EN-RH only. Other is Skunk Hollow vernal.

But Corps is not likely to actually require anything above say <\$350,000 in compensatory mitigation costs.

Environmental Significance: extent, severity, uniqueness, off-site impacts, duration.

Compliance Significance: culpability, compliance history, need for deterrence.

flagrant, repeat, ongoing

Insufficient permits

limited scope; permits expired; compensatory mitigation required; site conditions changed; no permits for cleanup.

Studies clearly described anticipated impacts:

NWP (0.35 acre); 2013 JD; CEQA studies (0.72 acre); CDFW 1600 (3.78 acres).

Flagrancy: no Environmental Consultant hired; withdrew application in 2013; impacted WOUS after receipt of USACE Notice of Violation (2018); owner explained its easier to violate then mitigate later.

Corps: "The unauthorized work may be authorized using an after-the-fact verification under NWP 38 (Cleanup of Hazardous and Toxic Waste) with compensatory mitigation provided by FRA's proposed 7.16-acre wetland establishment site."

Primary counterpoints

1. A NWP 38 (w/CERCLA) does not require a 404. Contamination cleanup alone argued as sufficient beneficial mitigation for WOUS.

Adaptability clause states the level of analysis should be commensurate with the level of impacts (404(b)(1)) and it was not. - 40 CFR 230.6(b).

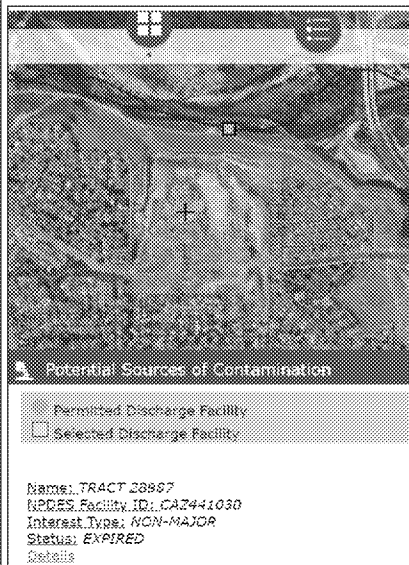
2. Owner claims non-notifying 404 & unregulated activities (clean excavation).

Corps states work was not clean excavation. Non-notifying cumulative acreage among other (perennial/wetlands, ESA, hazardous) would require SIP. The Proponent bears the burden of proof regarding activities.

- 33 CFR 323.2(d)(3)(i).

The person proposing to undertake mechanized landclearing, ditching, channelization or other excavation activity bears the burden of demonstrating that such activity would not destroy or degrade any area of waters of the United States. - 33 CFR 323.2(d)(3)(i)

(b) The Guidelines user, including the agency or agencies responsible for implementing the Guidelines, must recognize the different levels of effort that should be associated with varying degrees of impact and require or prepare commensurate documentation. The level of documentation should reflect the significance and complexity of the discharge activity. 40 CFR 230.6(b)



Water quality authorizations

Santa Ana Regional Water Quality Control Board

401 Cert. for 2003 development only

NPDES CAZ441030 – 2013, expired 2014

NPDES CAG998001 – 2019, denied in 2020

Informal enforcement/non-compliance notices

2015 testing shows no groundwater impacts

Santa Ana River = 303(d) impaired water

<https://geopub.epa.gov/DWWidgetApp/>

CAG998001 – 2019 – discharge of wastewater for residential construction.

JD for only 1.12 acres
(minus the unvegetated
streambeds)

